

Wells Fargo Bank, M.A. v Barrett
2014 NY Slip Op 31526(U)
March 25, 2014
Sup Ct, Suffolk County
Docket Number: 26130/11
Judge: Daniel Martin
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**SUPREME COURT OF THE STATE OF NEW YORK
I.A.S PART 9 SUFFOLK COUNTY**

INDEX NO.: 26130/11

PRESENT:

Hon. DANIEL MARTIN

MOTION DATE: 2-19-13

ADJ. DATE: 4-23-13

MOT. SEQ. #001 MG

PLAINTIFF'S ATTY:

SHELDON MAY & ASSOCIATES, P.C.
255 Merrick Road
Rockville Centre, N. Y. 11570

DEFENDANT'S ATTY:

ADAM GOMERMAN, ESQ.
807 East Jericho Tpke.
Huntington Station, N. Y. 11746

YVONNE BARRETT
a/k/a YVONNE M. BARRETT
a/k/a Y. BARRETT
105 44TH Street
Copiague, N. Y. 11726

ANDREA E. CAMERON
902 47th Street Apt. RD4
Brooklyn, N. Y. 11219

LVNV FUNDING, LLC
111 Eight Avenue
New York, N. Y. 10011

APPLIED INCOME SCIENCES, INC.
a/a/o Chase Manhattan Bank
One Manhattan Chase Plaza
New York, N. Y. 10007

Wells Fargo Bank, N.A., as certificate trustee (not in
its individual capacity but solely as certificate
trustee), in trust for registered Holders of VNT Trust
Series 2010-2

Plaintiff,

-against-

Yvonne Barrett a/k/a Yvonne M. Barrett a/k/a Y.
Barrett, Andrea E. Cameron, LVNV Funding LLC,
Applied Income Sciences, Inc., a/a/o Chase Manhattan
Bank, Municipal Credit Union, Town Supervisor,
town of Babylon, Atlantic Credit & Finance Inc./
Metris Direct Merchants BA and "JOHN DOE #1"
through "JOHN DOE #12", the last twelve names
being fictitious and unknown to plaintiff, the persons
or parties intended being the tenants, occupants,
persons or corporations, if any, having or claiming
an interest in or lien upon the premises being
foreclosed herein,

Defendants.

The following named papers have been read on this motion: for summary judgment and an order of reference

Order to Show Cause/Notice of Motion 1 - 17

Cross-Motion 0

Answering Affidavits 0

Replying Affidavits 0

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, the motion is decided as follows: it is

ORDERED that this unopposed motion by plaintiff Wells Fargo Bank, N.A., as certificate trustee (not in its individual capacity but solely as certificate trustee), in trust for registered Holders of VNT Trust Series 2010-2 (Wells Fargo) pursuant to CPLR 3212 for summary judgment on its complaint against defendant Yvonne Barrett a/k/a Yvonne M. Barrett a/k/a Y. Barrett (Barrett), to strike the answer of defendant Barrett, awarding plaintiff a default judgment as against the non-answering, non-appearing defendants and, for an order of reference appointing a referee to compute pursuant to Real Property Actions and Proceedings Law § 1321, is granted; and it is further

ORDERED that plaintiff's application to discontinue its prior action for foreclosure in connection with this matter under index number 2007-4258 is granted; and it is further

ORDERED that plaintiff's application to amend the caption of this action pursuant to CPLR 3025 (b) is granted; and it is further

ORDERED that the caption is hereby amended by striking therefrom the names "John Doe #1" through "John Doe #12"; and it is further

ORDERED that Plaintiff is directed to serve a copy of this order amending the caption of this action upon the Calendar Clerk of this Court; and it is further

ORDERED that the caption of this action hereinafter appear as follows:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK**

Wells Fargo Bank, N.A., as certificate trustee (not in
its individual capacity but solely as certificate
trustee), in trust for registered Holders of VNT Trust
Series 2010-2

Plaintiff,

-against-

Yvonne Barrett a/k/a Yvonne M. Barrett a/k/a Y.
Barrett, Andrea E. Cameron, LVNV Funding LLC,
Applied Income Sciences, Inc., a/a/o Chase Manhattan
Bank, Municipal Credit Union, Town Supervisor,
town of Babylon, Atlantic Credit & Finance Inc./
Metris Direct Merchants BA,

Defendants.

X

This is an action to foreclose a mortgage on premises known as 105 Forty-Fourth Street, Copiague, New York. On June 30, 2006, defendants Barrett and Andrea E. Cameron (Cameron) executed an adjustable rate note in favor of Tribeca Lending Corporation (Tribeca) agreeing to pay the sum of \$240,500.00 at the starting yearly rate of 12.990 percent. On June 30, 2006, defendants Barrett and Cameron also executed a first mortgage in the principal sum of \$240,500.00 on the subject property. The mortgage indicated Tribeca to be the lender and Mortgage Electronic Registration Systems, Inc. (MERS) to be the nominee of Tribeca as well as the mortgagee of record for the purposes of recording the mortgage. The mortgage was recorded on August 9, 2006 in the Suffolk County Clerk's Office. Thereafter, on January 25, 2007, the mortgage and note were transferred by assignment of mortgage from MERS, as nominee for Tribeca, to GMAC Mortgage, LLC (GMAC) and recorded on February 22, 2007 with the Suffolk County Clerk's Office. Thereafter, on November 5, 2007, the note and mortgage were transferred by assignment of mortgage from GMAC to Tribeca and recorded on November 20, 2007 with the Suffolk County Clerk's Office. Subsequently, on January 9, 2009, the note and mortgage were transferred by assignment of mortgage from Tribeca to Deutsche Bank National Trust Company, as trustee for Tribeca Lending Trust Series I (Deutsche Bank) and recorded on March 4, 2009 with the Suffolk County Clerk's Office. Thereafter, on March 22, 2011, the note and mortgage were transferred by a corrective assignment of mortgage from Deutsche Bank to The Huntington National Bank, as Certificate Trustee of Franklin Mortgage Asset Trust 2009-A (Huntington National) and recorded on May 25, 2011 with the Suffolk County Clerk's Office. Finally, on March 22, 2011, the note and mortgage were transferred by assignment of mortgage from Huntington National to plaintiff Wells Fargo and recorded on May 25, 2011 with the Suffolk County Clerk's Office.

A notice of default dated May 24, 2011 was sent to defendants Barrett and Cameron stating that they had defaulted on their mortgage loan and that the amount past due was \$186,592.51. As a result of defendants' continuing default, plaintiff commenced this foreclosure action on August 18, 2011. In its complaint, plaintiff alleges in pertinent part that defendants breached their obligations under the terms of the note and mortgage by failing to make monthly payments commencing with their July 1, 2007 payment and subsequent payments thereafter. Defendant Barrett interposed an answer with five affirmative defenses.

The Court's computerized records indicate that a foreclosure settlement conference was held on May 17, 2012 at which time this matter was referred as an IAS case since a resolution or settlement had not been achieved. Thus, there has been compliance with CPLR 3408 and no further settlement conferences are required.

Plaintiff now moves for summary judgment on its complaint contending that defendants breached their obligations under the terms of the loan agreement and mortgage by failing to tender monthly payments commencing with their July 1, 2007 payment and subsequent payments thereafter. In support of its motion, plaintiff submits among other things: the affidavit of Doug Battin, senior vice president for Accura Loan Services, the servicing agent and attorney in fact for plaintiff; the affirmation of Ted Eric May, Esq. in support of the instant motion; the affirmation of Ted Eric May, Esq. pursuant to the Administrative Order of the Chief Administrative Judge of the Courts (AO/431/11); the pleadings; the note, mortgage and assignments of mortgage; notices pursuant to RPAPL §§ 1320, 1304 and 1303; affidavits of service for the summons and complaint; an affidavit of service for the instant summary judgment motion upon defendants; and a proposed order appointing a referee to compute.

"[I]n an action to foreclose a mortgage, a plaintiff establishes its case as a matter of law through the production of the mortgage, the unpaid note, and evidence of default" (*Republic Natl. Bank of N.Y. v O'Kane*,

308 AD2d 482, 482, 764 NYS2d 635 [2d Dept 2003]; *see Argent Mtge. Co., LLC v Montesana*, 79 AD3d 1079, 915 NYS2d 591 [2d Dept 2010]). Once a plaintiff has made this showing, the burden then shifts to defendant to establish by admissible evidence the existence of a triable issue of fact as to a defense (*see Washington Mut. Bank v Valencia*, 92 AD3d 774, 939 NYS2d 73 [2d Dept 2012]).

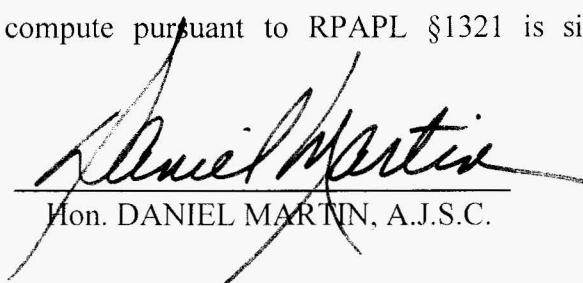
Here, plaintiff produced the note and mortgage executed by defendants Barrett and Cameron, as well as evidence of defendants' nonpayment, thereby establishing a prima facie case as a matter of law (*see Wells Fargo Bank Minnesota, Natl. Assn. v Mastropaolo*, 42 AD3d 239, 837 NYS2d 247 [2d Dept 2007]). Doug Battin, senior vice president for Acura Loan Services, the servicing agent and attorney in fact for plaintiff, avers that defendants defaulted on their payments commencing with the July 1, 2007 payment; that a notice of default was tendered to defendants; that a 90 day pre-foreclosure notice was mailed to the defendants; and, that defendants have not cured the default.

Defendant Barrett has not submitted opposition to the motion. Defendant's answer is insufficient, as a matter of law, to defeat plaintiff's unopposed motion (*see Argent Mtge. Co., LLC v Montesana*, 79 AD3d 1079, 915 NYS2d 591; *Citibank, N.A. v Souto Geffen Co.*, 231 AD2d 466, 647 NYS2d 467 [1st Dept 1996]; *Greater N.Y. Sav. Bank v 2120 Realty Inc.*, 202 AD2d 248, 608 NYS2d 463 [1st Dept 1994]). Since no opposition to the instant motion was filed by defendant Barrett, no triable issue of fact was raised in response to plaintiff's prima facie showing (*see Flagstar Bank v Bellafigliore*, 94 AD3d 1044, 943 NYS2d 551 [2d Dept 2012]; *Wells Fargo Bank Minnesota v Perez*, 41 AD3d 590, 837 NYS2d 877 [2d Dept 2007]; *see also Zanfini v Chandler*, 79 AD3d 1031, 912 NYS2d 911 [2d Dept 2010]).

Based upon the foregoing, the motion for summary judgment is granted against defendant Barrett and the defendant's answer is stricken. Plaintiff's request for an order of reference appointing a referee to compute the amount due plaintiff under the note and mortgage is granted (*see Vermont Fed. Bank v Chase*, 226 AD2d 1034, 641 NYS2d 440 [3d Dept 1996]; *Bank of East Asia, Ltd. v Smith*, 201 AD2d 522, 607 NYS2d 431 [2d Dept 1994]).

The proposed order appointing a referee to compute pursuant to RPAPL §1321 is signed simultaneously herewith as modified by the court.

Dated: MARCH 25, 2014.
Riverhead, NY


Hon. DANIEL MARTIN, A.J.S.C.

_____ FINAL DISPOSITION x NON-FINAL DISPOSITION

TOWN OF BABYLON
Supervisor
200 Sunrise Highway
Babylon, N. Y. 11757

ATLANTIC CREDIT & FINANCE INC.
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SHELTEN BARRETT AS DOE #1
105 4th Street
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